

REMARKS

This amendment is in response to the final Official Action dated July 11, 2007. Claim 1, and 5-6 have been cancelled, and claims 10-21 have been added; as such, claims 2-4, and 7-21 are currently pending in connection with the present application. Claims 2, 7, 8, and 9 are independent claims. Reconsideration and allowance is requested in view of the claim amendments and the following remarks.

By this amendment, claim 2 has been amended into independent form, incorporating all the limitations of claim 1, on which former claim 2 depended.

No new matter has been added. Support for the new claims is found in figure 1, 3, 4, 6, and 9, as well as the corresponding portions of the specification.

**The Finality of the Present Office Action is Improper because the Office Action
Improperly Addresses Applicant's Arguments to existing claims 2-4**

Applicant's prior response set forth that Nozaki et al. (U.S. Patent No. 6,937,549) fails to qualify as prior art for a combination under 35 U.S.C. § 103(a), under the congressional limitation set forth under 35 U.S.C. § 103(c).

The present Final Office action maintains the Nozaki rejection on the grounds set forth on page 6, arguing that "no documentation has been filed to show this fact."

Contrary to the assertion set forth in the office action, documentation was filed with the USPTO indicating that Nozaki and the present application have been assigned to Sony Corporation, at **Reel/Frame 014082/0957** (recorded at the USPTO on December 2002) and **Reel/Frame 015579/0356** (recorded at the USPTO on July 19, 2004), respectively, which are **readily available through PALM and the USPTO website**.

Furthermore, U.S. Patent No. 6,937,549 to Nozaki indicates in line 3 on the patent cover that it is assigned to “Sony Corporation, Tokyo, JP”.

Therefore finality was improper because the response failed to properly address Applicant's arguments to claims 2-4 with respect to the rejection under 35 U.S.C. § 103(a) (disclosed in Applicant's previous reply dated May 2, 2007). Furthermore, **any future action must also be non-final** as the USPTO has yet to provide a single proper action rejecting all of Applicant's claims.

Accordingly, Applicant respectfully requests that the Examiner issue a new non-final office action properly addressing all of Applicant's arguments applying qualified prior art.

Claim Rejections under 35 U.S.C. 103(a)

At least for the following reasons, if the allowance of the claims is not forthcoming and a new ground of rejection made, then a new non-final Office Action is respectfully requested.

Claim 2 has been amended into independent form including the subject matter of former claim 1, on which claim 2 depended. Former claim 1 has been cancelled.

Claims 2-4 have been rejected under 35 U.S.C. § 103 as being unpatentable over **Sako et al.** (U.S. PG Pub. 2003/0161233) in view of **Nozaki** (U.S. Patent No. 6,937,549).

Real Party In Interest: Sony Corporation of Tokyo, Japan (“Sony”) is the real party in interest of the present application. This application was filed on March 31, 2004 based on a priority application filed in Japan on April 4, 2003, and is also assigned to Sony Corporation. An assignment of all rights in the present application to Sony was executed by the inventor and recorded by the US patent and trademark office at Reel/Frame 015579/0356.

This rejection is based on 35 U.S.C. §103(a), but in fact is founded on 35 U.S.C. § 103 through 35 U.S.C. § 102(e). The relied upon patent to Nozaki was issued on August 30, 2005 (after this application was filed) based on a claimed PCT filing date of April 11, 2002, and is assigned to Sony Corporation, as indicated by line 3 of the front page of Nozaki and at Reel/Frame 014082/0957 (recorded at the USPTO on December 2002).

The present application was filed after April 11, 2002. Therefore, **the present application and Nozaki were co-pending and assigned to the same assignee.**

Accordingly, Nozaki is disqualified as prior art to form the basis of a rejection under 35 USC §103, according to 35 U.S.C. §103(c) and MPEP §706.02(l)(1).

Furthermore, as previously disclosed in the prior response Sako does not disclose, teach or, suggest at least the features of “[a] recording device for recording first encoded data at a high bit rate and second encoded data at a lower bit rate than that of said first encoded data, both encoded data corresponding to the same material data, on an information recording medium, comprising: a recording step of recording said first encoded data generated in said first generation step and said second encoded data generated in said second generation step on said information recording medium in an alternate manner in terms of time; and readout means for reading out said second encoded data recorded on said information recording medium while said recording means is recording any one of said first and second encoded data,” recited in independent claim 2. Claims 3-4 depend on claim 2, and therefore include the features of independent claim 2.

Therefore, Applicant respectfully requests that the rejection of claims 2-4 under 35 U.S.C. § 103(a) be withdrawn.

Claim Rejection under 35 U.S.C. §102 Rejections

Claims 1 and 5-9 have been rejected under 35 U.S.C. § 102(a) as being unpatentable over Sako et al. (U.S. PG Pub. 2003/0161233). As Sako does not have a filing date prior to applicant's priority application, Applicant assumes the Examiner maintains the rejection under 35 U.S.C. § 102(e).

Claims 1, 5, and 6 have been cancelled. Applicant respectfully traverses this rejection as it applies to claims 7-9, and further applies to new claim 10-12 (containing subject matter substantially similar to former claims 1, 5 and 6).

Independent claim 10 recites: *[a] recording device for recording first encoded data at a high bit rate and second encoded data at a lower bit rate than that of said first encoded data, both encoded data corresponding to the same material data, on an information recording medium, comprising:*

a recording step of recording said first encoded data generated in said first generation step and said second encoded data generated in said second generation step on said information recording medium in an alternate manner in terms of time; and

readout means for reading out said second encoded data recorded on said information recording medium while said recording means is recording any one of said first and second encoded data.

Sako discloses a device for cutting and reproducing recordings of data produced at a plurality of recording areas. In Figure 10, Sako illustrates a cutting device for recording data from a plurality of recording areas. A first data generator 12 records contents data 12a, originating at a first recording area (¶ 0054). A second data generator 14 records contents data 14a, originating at a second recording area (¶ 0055). A switching unit 15 selectively sends the output data from the first and second data generators, 12 and 14, to the optical modulator 17. Thereafter, optical modulator 17 records the output data from the switching unit onto a master disc 20. In Figure 11, Sako illustrates a device for reproducing the sound recorded on an optical disc 1. RF circuit 32 reads and transfers

data from optical disc 1 to controller 37. Controller 37 selectively passes the recorded data to a first decoder 35 and a second decoder 36. The first and second decoders, 35 and 36, jointly reproduce the multiple-input data recorded on optical disc 1.

Sako does not teach or suggest a “*readout means for reading out said second encoded data recorded on said information recording medium while said recording means is recording any one of said first and second encoded data.*” Instead, Sako discloses a technique for sequentially recording data on an optical disc (figure 10), and thereafter a separate technique for reading data from the optical disc (figure 11). Sako does not teach or suggest combining these techniques to *read data from a recording medium before completely finishing the write operation on the same recording medium.* Sako completely separates these operations, requiring a complete write operation before a read operation.

Furthermore, Sako does not teach or suggest, “*recording first encoded data at a high bit rate and second encoded data at a lower bit rate than that of said first encoded data, both encoded data corresponding to the same material data, on an information recording medium.*” As disclosed in Figure 10, Sako discloses a technique for **combining two contents data (from 2 separate input terminals) onto a single optical disc** (also, see Sako Abstract, and ¶¶[0054-0056]). Sako does not teach or suggest encoding data **corresponding to the same material data** in both a first and second bit-rate. Instead, Sako discloses recording two sets of data from completely different input terminals (elements 12a and 14a of Sako) onto the same disc (element 32 of Sako).

Sako therefore fails to disclose, teach, or suggest various features of independent claim 10. Furthermore, at least for the reason disclosed above, claims 11 and 12 also overcome Sako because they derive from independent claim 10.

Accordingly, Applicant submits that Sako does not anticipate the present claims under 35 U.S.C. § 102(a) or (e).

Response to Examiner's Arguments

The Office Action response to Applicant's arguments cites to an "Ikeda" reference. However, none of the Office Actions cite an "Ikeda" reference. Applicant assumes the Examiner incorrectly cited to "Ikeda" instead of "Sako," and has responded accordingly. If the Examiner is citing to another reference, Applicant respectfully requests the Examiner provide a corresponding Patent or Publication Number.

The Response to the Applicant's Arguments contends that Sako teaches reading data while the recording is in progress. Citing to Sako at 2:18-44 (¶¶ 10-11), the office action contends that data is continuously written and read out while the continuous recording is taking place.

¶ 10 of Sako teaches a recording medium onto which an information data, a first recording area and a second recording area is allocated. ¶ 11-12 of Sako describes an apparatus for reading out data from the recording medium disclosed in ¶ 10. Neither paragraph 10, 11, nor 12 teach or suggest that data is simultaneously recorded and read.

The response to the Applicant's Arguments further contends that Sako at 2:18-44 (corresponding to ¶¶ 10-12) teaches recording first data at a high bit rate and second data at a lower bit rate in the first data, but incorrectly asserts that both first and second data correspond to the same material.

On the contrary, ¶¶ 10-12 disclose that Sako teaches recording data into different formats at two separate locations on the recording medium. Sako fails to teach that these two separate formats consist of separate bit rates. That is, to Seiko does not teach or suggest that the first bit rate includes a different bit rate than the second recording formats.

CONCLUSION

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. SON-2966 from which the undersigned is authorized to draw.

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Respectfully submitted,

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